



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1998

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-2959

Dear Ms. Vollman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120174.

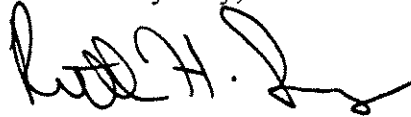
The Harris County District Attorney's Office received a request for all information pertaining to a police investigation and case. You indicate that certain records "will be disclosed to the requestor when the file is located," but you also assert that some of the records are confidential by law. However, you did not submit to this office for review the documents which you contend are confidential.

Section 552.301(a) provides that a governmental body which receives a written request for information that the governmental body believes should be protected from disclosure under an exception outlined in chapter 552, must seek a decision from this office. Section 552.301(b) provides that when the governmental body requests a decision from this office, the governmental body must provide to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Because you did not submit to this office a copy of the information requested or a representative sample of the information requested, this office notified you by facsimile on September 28, 1998, that you had failed to submit records as required by section 552.301(b). We requested that you provide, within seven days of receipt of the notice, a copy of either the specific information at issue or a representative sample of the information. Gov't Code § 552.303(c). The notice further stated that, under section 552.303(e), failure to supply these documents would result in the legal presumption that the information at issue is presumed public.

You did not provide our office with the information that was requested. We note that, generally, information which is presumed public must be released unless the governmental body demonstrates a compelling interest in withholding the information, such as showing that the records are confidential by statute or that they implicate a third party's privacy interests. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Your submitted brief indicates that the documents at issue include medical reports, criminal history reports, and information about police officers, all of which are confidential by statute, and also information about a sexual assault victim which could implicate the victim's common-law protected privacy interests. However, as you did not submit the records at issue to this office, we have no basis on which to determine that the records at issue are actually confidential. Thus, the records are presumed to be public under section 552.303(e), but we note that if these records are actually confidential by law they may not be released to the requestor. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 120174

cc: Mr. Robert Wayne Holzwarth
103 Greeway Drive
Conroe, Texas 77301